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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of



DECISION

MDD/141871

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 6, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Sheboygan County Department of Human Services in regard to Medical Assistance, a hearing was held on September 4, 2012, at Sheboygan, Wisconsin.

The issue for determination is whether petitioner was properly determined to be not disabled.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:



Appearing for petitioner:

Monica Froh, Disability Benefits  
Specialist

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: No Appearance

**ADMINISTRATIVE LAW JUDGE:**

Michael A. Greene  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Sheboygan County.
2. Petitioner is 51-year old male who is diagnosed with a variety of impairments, including diabetes, bilateral rotator cuff tendinitis with impingement, acromioclavicular osteoarthritis with spurring, severe tricompartmental degenerative change of the right knee, moderate degenerative disc disease of the lower back, chronic pain in the shoulders, neck, right hip, right knee and lower

back, hypertension, insomnia and depression. Petitioner also claims to have a learning disability involving a lack of reading comprehension.

3. Petitioner applied for EBD Medicaid on December 6, 2011. He was found to be not disabled and his application was denied by letter dated February 8, 2012. Reconsideration was requested on February 29, 2012 and denied.

### **DISCUSSION**

Petitioner appeals the DDB's finding that he is not disabled and therefore not eligible for MA benefits under *Wis. Stats.* §49.47(4)(a)4. The state's definition of disability is taken from Title XVI of the federal Social Security Act and, with respect to adults, requires a finding of

[T]he inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

20 CFR §416.905(a).

The determination as to whether an individual is "disabled" for purposes of MA is made according to a five-step sequential evaluation set forth in 20 CFR §416.920. If it can be determined that an individual is disabled or not disabled at any point during the sequence, the procedure is terminated because no further evaluation is necessary. Petitioner was found to be "not disabled" because his severity of his impairments did not meet or exceed the listing requirements at the third step, 20 CFR §416.920(a)(4)(iii) and because he was found to have sufficient residual functional capacity to adjust to other work considering his age, education and work experience at the fifth step, 20 CFR §416.920(a)(4)(v).

**Step 1. Current work.** The first step involves evaluation of the individual's current work status. An individual is not disabled if he is working and engaged in "substantial gainful activity," 20 CFR §416.920(a)(4)(i). At the time of the initial determination and the decision on reconsideration, petitioner was not working.

**Step 2. Medical severity and duration of the impairment.** The second step in the sequential evaluation is consideration of the "medical severity" of the impairment. An impairment is "severe" if it "significantly limits [the individual's] physical or mental ability to do basic work activities," 20 CFR §416.920(c). Basic work activities include

- (1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;
- (2) Capacities for seeing, hearing, and speaking;
- (3) Understanding, carrying out, and remembering simple instructions;
- (4) Use of judgment;
- (5) Responding appropriately to supervision, co-workers and usual work situations; and
- (6) Dealing with changes in a routine setting.

In addition, petitioner's impairments must meet the "duration requirement," meaning that the impairment is expected to last for a continuous period of twelve months or result in death, 20 CFR §416.909. The DDB concluded that petitioner's impairments were severe and, by implication, that they satisfied the duration requirement, because it proceeded to the third step of the sequence.

**3. The “Listing of Impairments.”** The third step involves consideration of whether the petitioner’s impairment meets or equals one of the listings in Appendix 1, 20 CFR §416.920(a)(4)(iii); 20 CFR Part 404, Appendix 1 to Subpart P (immediately after §404.1599) (Appendix). These listings describe the impairments for each of the major bodily systems that are considered to be severe enough to prevent a person from engaging in any gainful activity, 20 CFR §416.920(d). The DDB concluded that petitioner’s impairments did not meet the level of severity prescribed in the listings and I concur.

Petitioner’s principal complaints concern his ability to walk due to pain in his hip and knee and pain from his shoulders. The Listings categorize these impairments as musculoskeletal in nature involving a major dysfunction of one or more joint due to any cause, Listings §1.02. Such a major dysfunction is characterized by

...gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction or ankylosis of the affected joint(s).

These deformities must be accompanied by

- A. Involvement of one major peripheral weight-bearing joint ( *i.e.*, hip, knee, or ankle), resulting in inability to ambulate effectively...or
- B. Involvement of one major peripheral joint in each upper extremity (*i.e.*, shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively....

Listings §§1.02A and B. Inability to ambulate effectively is defined as

An extreme limitation of the ability to walk; *i.e.*, an impairment(s) that interferes very seriously with the individual’s ability to independently initiate, sustain or complete activities. Ineffective ambulation is defined generally as having insufficient lower extremity functioning...to permit independent ambulation without the use of a hand-held assistive device(s) that limits the functioning of both upper extremities.

Listings §1.002b(1). An example would be an individual who is unable to walk without the use of a walker, two crutches or two canes, Listings §1.002b(2). While petitioner’s ability to walk is clearly limited, the evidence does not appear to support such a severe limitation on petitioner’s ability to walk as would place it within the Listings. Similarly, inability to perform fine and gross movements effectively means

[A]n extreme loss of function of both upper extremities; *i.e.*, an impairment(s) that interferes very seriously with the individual’s ability to independently initiate, sustain or complete activities ....[E]xamples of inability to perform fine and gross movements effectively include, but are not limited to, the inability to prepare a simple meal and feed oneself, the inability to take care of personal hygiene, the inability to sort and handle papers or files and the inability to place files in a file cabinet at or above waist level.

Listings §1.002c. Again, the evidence does not support such drastic limitations on petitioner's ability to perform gross and fine movements effectively.

Based on the foregoing, I conclude that petition does not meet the Listings and that it is unnecessary to proceed to the fourth and fifth steps.

### **CONCLUSIONS OF LAW**

The Disability Determination Bureau correctly found that petitioner was not disabled for purposes of being eligible for EBD Medical Assistance.

**THEREFORE, it is**

**ORDERED**

That the petition for review herein be and hereby is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

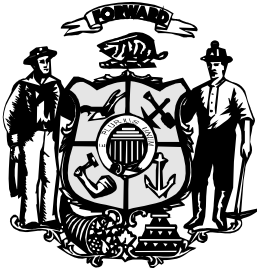
The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 9th day of October, 2012

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Michael A. Greene  
Administrative Law Judge  
Division of Hearings and Appeals

c: Department of Health Services - email  
Sheboygan County Department of Human Services, email - Sheboygan County



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 9, 2012.

Sheboygan County Department of Human Services  
Disability Determination Bureau